

103D CONGRESS
1ST SESSION

S. 368

To amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in startup and other small enterprises.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 5), 1993

Mr. BUMPERS (for himself, Mr. BROWN, Mr. KERRY, Mr. LIEBERMAN, Mr. MACK, Mr. RIEGLE, Mr. WOFFORD, Mr. COATS, Mr. BOREN, Mr. DASCHLE, Mr. CRAIG, Mr. DODD, Mr. D'AMATO, Mr. PRYOR, Mr. DECONCINI, Mr. JOHNSTON, Mrs. FEINSTEIN, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in startup and other small enterprises.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Enterprise Capital Formation Act of 1993”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSI-**
 8 **NESS STOCK.**

9 (a) GENERAL RULE.—Part I of subchapter P of
 10 chapter 1 (relating to capital gains and losses) is amended
 11 by adding at the end thereof the following new section:

12 **“SEC. 1202. EXCLUSION FOR GAIN FROM CERTAIN SMALL**
 13 **BUSINESS STOCK.**

14 “(a) EXCLUSION.—

15 “(1) IN GENERAL.—Gross income shall not in-
 16 clude the sum of—

17 “(A) 50 percent of any gain from the sale
 18 or exchange of qualified small business stock
 19 (other than seed capital stock) held for more
 20 than 5 years, plus

21 “(B) the amounts determined by applying
 22 the applicable percentages to the appropriate
 23 categories of gain from the sale or exchange of
 24 qualified small business stock which is seed cap-
 25 ital stock held for more than 5 years.

1 “(2) APPLICABLE PERCENTAGE.—For purposes
2 of paragraph (1), the applicable percentage shall be
3 computed as follows:

“In the case of:	The applicable percentage is:
5-year gain	50
6-year gain	60
7-year gain	70
8-year gain	80
9-year gain	90
10-year gain	100.

4 “(3) CATEGORIES OF GAIN.—

5 “(A) 10-YEAR GAIN.—The term ‘10-year
6 gain’ means gain determined by taking into ac-
7 count only gain from qualified small business
8 stock with a holding period of more than 10
9 years at the time of the sale or exchange.

10 “(B) OTHER GAIN.—The terms ‘5-, 6-,
11 7-, 8-, and 9-year gain’ mean the gain deter-
12 mined by taking into account only gain from
13 qualified small business stock with a holding pe-
14 riod of more than 5, 6, 7, 8, or 9 years but not
15 more than 6, 7, 8, 9, or 10 years, respectively.

16 “(b) QUALIFIED SMALL BUSINESS STOCK; SEED
17 CAPITAL STOCK.—For purposes of this section—

18 “(1) IN GENERAL.—Except as otherwise pro-
19 vided in this section, the term ‘qualified small busi-
20 ness stock’ means any stock in a corporation which
21 is originally issued on or after January 1, 1993, if—

1 “(A) as of the date of issuance, such cor-
2 poration is a qualified small business, and

3 “(B) except as provided in subsections (e),
4 (f), and (g), such stock is acquired by the tax-
5 payer at its original issue (directly or through
6 an underwriter)—

7 “(i) in exchange for money or other
8 property (not including stock), or

9 “(ii) as compensation for services
10 (other than services performed as an un-
11 derwriter of such stock).

12 “(2) ACTIVE BUSINESS REQUIREMENT.—Stock
13 in a corporation shall not be treated as qualified
14 small business stock unless, during substantially all
15 of the taxpayer’s holding period for such stock, such
16 corporation meets the active business requirements
17 of subsection (d).

18 “(3) CERTAIN PURCHASES BY CORPORATION OF
19 ITS OWN STOCK.—

20 “(A) IN GENERAL.—Stock issued by a cor-
21 poration shall not be treated as qualified small
22 business stock if such corporation has pur-
23 chased or purchases any of its stock within the
24 2-year period beginning 1 year before the date
25 of the issuance of such stock.

1 “(B) EXCEPTION WHERE BUSINESS PUR-
2 POSE.—Subparagraph (A) shall not apply
3 where the issuing corporation establishes that
4 there was a business purpose for the purchase
5 of the stock and such purchase is not inconsis-
6 tent with the purposes of this section. Except as
7 provided in regulations, the preceding sentence
8 shall not apply to any purchase which—

9 “(i) is part of a transaction or series
10 of transactions in which the corporation
11 purchases not more than 5 percent (by
12 vote or value) of the outstanding shares of
13 the corporation, or

14 “(ii) is a purchase by the corporation
15 of convertible preferred stock of the cor-
16 poration but only if such purchase is re-
17 quired by the terms of the stock being pur-
18 chased.

19 “(C) MEMBERS OF AFFILIATED GROUP.—
20 For purposes of this paragraph, the purchase of
21 any stock of the issuing corporation by any cor-
22 poration which, as of the time of the purchase,
23 is a member of the same affiliated group (with-
24 in the meaning of section 1504) as the issuing

1 corporation shall be treated as a purchase by
2 the issuing corporation of its stock.

3 “(4) SEED CAPITAL STOCK.—The term ‘seed
4 capital stock’ means stock which is qualified small
5 business stock in a qualified small business, as de-
6 termined under subsection (c) by substituting
7 ‘\$5,000,000’ for ‘\$100,000,000’ each place it ap-
8 pears in subsection (c)(1).

9 “(c) QUALIFIED SMALL BUSINESS.—For purposes of
10 this section—

11 “(1) IN GENERAL.—The term ‘qualified small
12 business’ means any domestic corporation if—

13 “(A) the aggregate capitalization of such
14 corporation (or any predecessor thereof) at all
15 times on or after January 1, 1993, and before
16 the issuance did not exceed \$100,000,000, and

17 “(B) the aggregate capitalization of such
18 corporation immediately after the issuance (de-
19 termined by taking into account amounts to be
20 received in the issuance) does not exceed
21 \$100,000,000.

22 “(2) AGGREGATE CAPITALIZATION.—For pur-
23 poses of paragraph (1), the term ‘aggregate capital-
24 ization’ means the excess of—

1 “(A) the amount of cash and the aggregate
2 adjusted bases of other property held by the
3 corporation, over

4 “(B) the aggregate amount of the short-
5 term indebtedness of the corporation.

6 For purposes of the preceding sentence, the term
7 ‘short-term indebtedness’ means any indebtedness
8 which, when incurred, did not have a term in excess
9 of 1 year.

10 “(3) LOOK-THRU IN CASE OF SUBSIDIARIES.—
11 In determining whether a corporation meets the re-
12 quirements of this subsection—

13 “(A) stock and debt of any subsidiary (as
14 defined in subsection (d)(4)(C)) held by such
15 corporation shall be disregarded, and

16 “(B) such corporation shall be treated as
17 holding its ratable share of the assets of such
18 subsidiary and as being liable for its ratable
19 share of the indebtedness of such subsidiary.

20 For purposes of subparagraph (B), a corporation’s
21 ratable share shall be based on its share of the total
22 combined voting power of the stock of the subsidi-
23 ary.

24 “(4) COST-OF-LIVING ADJUSTMENT.—In the
25 case of any taxable year beginning after 1993, each

1 dollar amount contained in paragraph (1) and sub-
2 section (b)(4) shall be increased by an amount equal
3 to such dollar amount multiplied by the cost-of-living
4 adjustment determined under section 1(f)(3) for the
5 calendar year in which the taxable year begins, ex-
6 cept that section 1(f)(3)(B) shall be applied by sub-
7 stituting ‘1992’ for ‘1989’.

8 “(d) ACTIVE BUSINESS REQUIREMENT.—For pur-
9 poses of this section—

10 “(1) IN GENERAL.—For purposes of subsection
11 (b)(2), the requirements of this subsection are met
12 for any period if during such period—

13 “(A) the corporation is engaged in the ac-
14 tive conduct of a trade or business,

15 “(B) substantially all of the assets of such
16 corporation are used in the active conduct of a
17 trade or business, and

18 “(C) such corporation is an eligible cor-
19 poration.

20 “(2) SPECIAL RULE FOR CERTAIN ACTIVI-
21 TIES.—For purposes of paragraph (1), if, in connec-
22 tion with any future trade or business, a corporation
23 is engaged in—

24 “(A) startup activities described in section
25 195(c)(1)(A),

1 “(B) activities resulting in the payment or
2 incurring of expenditures which may be treated
3 as research and experimental expenditures
4 under section 174, or

5 “(C) activities with respect to in-house re-
6 search expenses described in section 41(b)(4),
7 such corporation shall be treated with respect to
8 such activities as engaged in (and assets used in
9 such activities shall be treated as used in) the active
10 conduct of a trade or business. Any determination
11 under this paragraph shall be made without regard
12 to whether a corporation has any gross income from
13 such activities at the time of the determination.

14 “(3) ELIGIBLE CORPORATION.—For purposes
15 of this subsection—

16 “(A) IN GENERAL.—The term ‘eligible cor-
17 poration’ means any domestic corporation; ex-
18 cept that such term shall not include—

19 “(i) any corporation predominantly
20 engaged in a disqualified business,

21 “(ii) any personal service corporation
22 (within the meaning of section 269A(b)),

23 “(iii) a DISC,

1 “(iv) a corporation with respect to
2 which an election under section 936 is in
3 effect,

4 “(v) any regulated investment com-
5 pany, real estate investment trust, or
6 REMIC,

7 “(vi) any cooperative, and

8 “(vii) in the case of a corporate share-
9 holder, any corporation which at any time
10 was a subsidiary (as defined in paragraph
11 (4)(C)) of such corporate shareholder.

12 “(B) DISQUALIFIED BUSINESS.—The term
13 ‘disqualified business’ means—

14 “(i) any banking, insurance, financ-
15 ing, or similar business,

16 “(ii) any farming business (other than
17 the business of raising or harvesting trees),

18 “(iii) any business involving the pro-
19 duction or extraction of products of a char-
20 acter with respect to which a deduction is
21 allowable under section 613 or 613A, and

22 “(iv) any business of franchising or
23 operating a hotel, motel, or restaurant or
24 similar business.

25 “(4) STOCK IN OTHER CORPORATIONS.—

1 “(A) LOOK-THRU IN CASE OF SUBSIDI-
2 ARIES.—For purposes of this subsection, stock
3 and debt in any subsidiary corporation shall be
4 disregarded and the parent corporation shall be
5 deemed to own its ratable share of the subsidi-
6 ary’s assets, and to conduct its ratable share of
7 the subsidiary’s activities. For purposes of the
8 preceding sentence, a corporation’s ratable
9 share shall be based on its share of the total
10 combined voting power of the stock of the sub-
11 sidiary.

12 “(B) PORTFOLIO STOCK OR SECURITIES.—
13 A corporation shall be treated as failing to meet
14 the requirements of paragraph (1) for any pe-
15 riod during which more than 10 percent of the
16 value of its assets consists of stock or securities
17 in other corporations which are not subsidiaries
18 of such corporation (other than assets described
19 in paragraph (5)).

20 “(C) SUBSIDIARY.—For purposes of this
21 paragraph, a corporation shall be considered a
22 subsidiary if the parent corporation owns more
23 than 50 percent of the combined voting power
24 of all classes of stock entitled to vote, or more

1 than 50 percent in value of all outstanding
2 stock, of such corporation.

3 “(5) WORKING CAPITAL.—For purposes of
4 paragraph (1)(B), any assets which—

5 “(A) are held for investment, and

6 “(B) are to be used to finance future re-
7 search and experimentation or working capital
8 needs of the corporation,
9 shall be treated as used in the active conduct of a
10 trade or business.

11 “(6) MAXIMUM REAL ESTATE HOLDINGS.—A
12 corporation shall be treated as failing to meet the re-
13 quirements of paragraph (1) for any period during
14 which more than 10 percent of the total value of its
15 assets consists of real property which is not used (or
16 to be used) in the active conduct of a trade or busi-
17 ness. For purposes of the preceding sentence—

18 “(A) the ownership of, dealing in, or rent-
19 ing of real property shall not be treated as the
20 active conduct of a trade or business; and

21 “(B) the total value of the assets and of
22 any real property shall be reduced by all liabil-
23 ities to which the property is subject.

24 “(7) COMPUTER SOFTWARE ROYALTIES.—For
25 purposes of paragraph (1), rights to computer soft-

1 ware which produces income described in section
2 543(d) shall be treated as an asset used in the active
3 conduct of a trade or business.

4 “(8) EXCEPTION FOR SMALL BUSINESS INVEST-
5 MENT COMPANIES.—This subsection shall not apply
6 to any small business investment company described
7 in section 301 of the Small Business Investment Act
8 of 1958 (15 U.S.C. 682).

9 “(e) STOCK ACQUIRED ON CONVERSION OF OTHER
10 STOCK.—If any stock is acquired through the conversion
11 of other stock which is qualified small business stock in
12 the hands of the taxpayer—

13 “(1) the stock so acquired shall be treated as
14 qualified small business stock in the hands of the
15 taxpayer, and

16 “(2) the stock so acquired shall be treated as
17 having been held during the period during which the
18 converted stock was held.

19 “(f) SPECIAL RULES FOR WARRANTS AND CERTAIN
20 CONVERTIBLE INVESTMENTS.—For purposes of this sec-
21 tion—

22 “(1) IN GENERAL.—In the case of stock which
23 is acquired by the taxpayer through the exercise of
24 an applicable warrant, through the conversion of
25 convertible debt, or in exchange for securities of the

1 corporation in a transaction described in section
2 368—

3 “(A) such stock shall be treated as ac-
4 quired by the taxpayer at original issue,

5 “(B) the holding period of such stock shall
6 be treated for purposes of subsection (a) as in-
7 cluding the period such warrant or debt was
8 held by the taxpayer, or such security was out-
9 standing, and

10 “(C) such stock shall be treated as meeting
11 the requirements of subsection (c) if such re-
12 quirements were met at the time the warrant,
13 debt, or security was acquired by the taxpayer.

14 “(2) ISSUE PRICE FOR CONVERTIBLE DEBT OR
15 SECURITY.—For purposes of subsection (c)(1), in
16 the case of a debt instrument converted to stock, or
17 stock issued in exchange for securities in a trans-
18 action described in section 368, such stock shall be
19 treated as issued for an amount equal to the sum
20 of—

21 “(A) the principal amount of the debt or
22 security as of the time of the conversion or ex-
23 change, and

24 “(B) accrued but unpaid interest on such
25 debt or security.

1 “(3) APPLICABLE WARRANT.—For purposes of
2 this subsection, the term ‘applicable warrant’ means
3 a warrant which—

4 “(A) was granted in connection with the
5 performance of services for the corporation
6 granting it (or its parent or subsidiary), and

7 “(B) by its terms is not transferable other
8 than by will or the laws of descent or distribu-
9 tion.

10 “(g) SPECIAL RULE FOR OPTIONS.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, in the case of stock which is acquired by the
13 taxpayer through the exercise of an applicable op-
14 tion—

15 “(A) such stock shall be treated as ac-
16 quired by the taxpayer at original issue,

17 “(B) such stock shall be treated as having
18 been held during the period such option was
19 held by the taxpayer, and

20 “(C) such stock shall be treated as meeting
21 the requirements of subsection (c) if such re-
22 quirements were met at the time the option was
23 granted.

1 “(2) APPLICABLE OPTION.—For purposes of
2 this subsection, the term ‘applicable option’ means
3 an option which—

4 “(A) was granted in connection with the
5 performance of services for the corporation
6 granting it (or its parent or subsidiary), and

7 “(B) by its terms is not transferable other
8 than by will or the laws of descent or distribu-
9 tion.

10 “(h) TREATMENT OF PASS-THRU ENTITIES.—

11 “(1) IN GENERAL.—Any amount included in in-
12 come by reason of holding an interest in a pass-thru
13 entity shall be treated as gain described in sub-
14 section (a) if such amount meets the requirements
15 of paragraph (2).

16 “(2) REQUIREMENTS.—An amount meets the
17 requirements of this paragraph if—

18 “(A) such amount is attributable to gain
19 on the sale or exchange by the pass-thru entity
20 of stock which is qualified small business stock
21 in the hands of such entity and which was held
22 by such entity for more than 5 years, and

23 “(B) such amount is includible in the gross
24 income of the taxpayer by reason of the holding
25 of an interest in such entity which was held by

1 the taxpayer on the date on which such pass-
2 thru entity acquired such stock and at all times
3 thereafter before the disposition of such stock
4 by such pass-thru entity.

5 “(3) LIMITATION BASED ON INTEREST ORIGI-
6 NALLY HELD BY TAXPAYER.—Paragraph (1) shall
7 not apply to any amount to the extent such amount
8 exceeds the amount to which paragraph (1) would
9 have applied if such amount were determined by ref-
10 erence to the interest the taxpayer held in the pass-
11 thru entity on the date the qualified small business
12 stock was acquired.

13 “(4) PASS-THRU ENTITY.—For purposes of this
14 subsection, the term ‘pass-thru entity’ means—

15 “(A) any partnership,

16 “(B) any S corporation,

17 “(C) any regulated investment company,

18 and

19 “(D) any common trust fund.

20 “(i) CERTAIN TAX-FREE AND OTHER TRANSFERS.—
21 For purposes of this section—

22 “(1) IN GENERAL.—In the case of a transfer of
23 stock to which this subsection applies, the transferee
24 shall be treated as—

1 “(A) having acquired such stock in the
2 same manner as the transferor, and

3 “(B) having held such stock during any
4 continuous period immediately preceding the
5 transfer during which it was held (or treated as
6 held under this subsection) by the transferor.

7 “(2) TRANSFERS TO WHICH SUBSECTION AP-
8 PLIES.—This subsection shall apply to any trans-
9 fer—

10 “(A) by gift,

11 “(B) at death,

12 “(C) subject to the limitation of subsection
13 (h)(3), from a partnership to a partner of stock
14 with respect to which the requirements of sub-
15 section (h) are met at the time of the transfer
16 (without regard to the 5-year holding require-
17 ment),

18 “(D) to the extent that the basis of the
19 property in the hands of the transferee is deter-
20 mined by reference to the basis of the property
21 in the hands of the transferor by reason of sec-
22 tion 334(b), but only if requirements similar to
23 the requirements of subsection (h) are met with
24 respect to the stock,

1 “(E) of qualified small business stock for
2 other qualified small business stock in a trans-
3 action described in section 351 or a reorganiza-
4 tion described in section 368, or

5 “(F) as a stock distribution of qualified
6 small business stock in a transaction not sub-
7 ject to tax under section 305.

8 “(3) CERTAIN RULES MADE APPLICABLE.—In
9 the case of distributions or transactions described in
10 subparagraph (E) or (F) of section 368(a)(1), rules
11 similar to the rules of section 1244(d)(2) shall apply
12 for purposes of this section.

13 “(4) INCORPORATIONS AND REORGANIZATIONS
14 INVOLVING NONQUALIFIED STOCK.—

15 “(A) IN GENERAL.—In the case of a trans-
16 action described in section 351 or a reorganiza-
17 tion described in section 368, if qualified small
18 business stock is transferred for other stock,
19 such transfer shall be treated as a transfer to
20 which this subsection applies solely with respect
21 to the person receiving such other stock.

22 “(B) LIMITATION.—This section shall
23 apply to the sale or exchange of stock treated
24 as qualified small business stock by reason of
25 subparagraph (A) only to the extent of the gain

(if any) which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time.

“(C) SUCCESSIVE APPLICATION.—For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which subparagraph (A) applied.

“(D) CONTROL TEST.—Except in the case of a transaction described in section 368, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was transferred.

“(j) BASIS RULES.—

“(1) STOCK EXCHANGED FOR PROPERTY.—For purposes of this section, in the case where the taxpayer transfers property (other than money or

1 stock) to a corporation in exchange for stock in such
2 corporation—

3 “(A) such stock shall be treated as having
4 been acquired by the taxpayer on the date of
5 such exchange, and

6 “(B) the basis of such stock in the hands
7 of the taxpayer shall in no event be less than
8 the fair market value of the property ex-
9 changed.

10 Notwithstanding subparagraph (B), for purposes of
11 subsection (c)(1), the adjusted basis to the corpora-
12 tion of the property received shall be the fair market
13 value of such property at the time of the determina-
14 tion.

15 “(2) BASIS OF S CORPORATION STOCK.—For
16 purposes of determining the amount of gain to which
17 this section applies, the adjusted basis of stock in an
18 S corporation shall in no event be less than its ad-
19 justed basis determined without regard to any ad-
20 justment to the basis of such stock under section
21 1367.

22 “(k) APPLICATION OF TAX INCENTIVE TO CURRENT
23 STOCK HOLDINGS OF INVESTORS.—

24 “(1) IN GENERAL.—If—

1 “(A) a taxpayer holds any stock on Decem-
2 ber 31, 1992, which, at the time it was issued,
3 would have been treated as qualified small busi-
4 ness stock if such determination had been made
5 without regard to the time such stock was is-
6 sued, and

7 “(B) the value of such stock on December
8 31, 1992 exceeds its adjusted basis,
9 the taxpayer may elect to treat such stock as having
10 been sold on such date for an amount equal to its
11 value on such date (and as having been reacquired
12 on such date for an amount equal to such value).
13 The gain attributable to such sale shall be treated
14 as realized and recognized or accrued (and the hold-
15 ing period of the reacquired stock shall be treated as
16 beginning) on December 31, 1992. For purposes of
17 applying this section, the requirement of subsection
18 (b)(1) that the stock must have been issued on or
19 after January 1, 1993, shall not apply.

20 “(2) ELECTION.—An election under paragraph
21 (1) with respect to any stock shall be made in such
22 manner as the Secretary may prescribe. Such an
23 election, once made with respect to any stock, shall
24 be irrevocable.

1 “(l) REGULATIONS.—The Secretary shall prescribe
 2 such regulations as may be appropriate to carry out the
 3 purposes of this section, including regulations to prevent
 4 the avoidance of the purposes of this section through split-
 5 ups or otherwise.”.

6 (b) MAXIMUM 14 PERCENT TAX RATE.—

7 (1) INDIVIDUALS.—Section 1(h) is amended to
 8 read as follows:

9 “(h) MAXIMUM CAPITAL GAINS RATE.—

10 “(1) IN GENERAL.—If a taxpayer has a net
 11 capital gain for any taxable year, then the tax im-
 12 posed by this section shall not exceed the sum of—

13 “(A) a tax computed at the rates and in
 14 the same manner as if this subsection had not
 15 been enacted on the greater of—

16 “(i) taxable income reduced by the
 17 amount of the net capital gain, or

18 “(ii) the amount of taxable income
 19 taxed at a rate below 28 percent, plus

20 “(B) a tax of 28 percent of the amount of
 21 taxable income in excess of the amount deter-
 22 mined under subparagraph (A).

23 “(2) SPECIAL RULE WHERE TAXPAYER HAS
 24 QUALIFIED SMALL BUSINESS NET CAPITAL OR SEED
 25 CAPITAL GAIN.—

“(A) IN GENERAL.—If a taxpayer has gain for any taxable year attributable to the sale or exchange of any qualified small business stock held for more than 5 years, then the tax imposed by this section shall not exceed the lesser of—

“(i) the amount determined under paragraph (1), or

“(ii) the sum of—

“(I) the amount determined under paragraph (1) without taking into account gain or loss from qualified small business stock held for more than 5 years for purposes of subparagraphs (A) and (B) thereof, plus

“(II) 14 percent of the net capital gain determined by only taking into account such gain or loss.

“(B) DEFINITION.—For purposes of this paragraph, the term ‘qualified small business stock’ has the meaning given such term by section 1202.”.

(2) CORPORATIONS.—Section 1201(a) is amended—

1 (A) by inserting “or the corporation has
 2 gain from the sale or exchange of any qualified
 3 small business stock held for more than 5
 4 years” before “, then”, and

5 (B) by striking paragraph (2) and insert-
 6 ing:

7 “(2) a tax equal to the sum of—

8 “(A) 34 percent of the sum of the net cap-
 9 ital gain, determined by not taking into account
 10 any gain or loss from the sale or exchange of
 11 any qualified small business stock held for more
 12 than 5 years, plus

13 “(B) 17 percent of the net capital gain de-
 14 termined by only taking into account such gain
 15 or loss.

16 For purposes of this subsection, the term ‘qualified small
 17 business stock’ has the meaning given such term by sec-
 18 tion 1202.’.

19 (c) MINIMUM TAX TREATMENT.—

20 (1) IN GENERAL.—Subsection (a) of section 57
 21 (relating to items of tax preference) is amended by
 22 adding at the end thereof the following new para-
 23 graph:

24 “(8) EXCLUSION FOR GAINS ON SALE OF VEN-
 25 TURE CAPITAL SMALL BUSINESS STOCK.—An

1 amount equal to the amount excluded from gross in-
 2 come for the taxable year under section
 3 1202(a)(1)(A) (relating to exclusion of gain on small
 4 business stock other than seed capital stock).”.

5 (2) CONFORMING AMENDMENT.—Subclause (II)
 6 of section 53(d)(2)(B)(ii) is amended by striking
 7 “and (6)” and inserting “(6), and (8)”.

8 (d) LOSSES ON SMALL BUSINESS STOCK.—Section
 9 1244(c)(3)(A) is amended by striking “\$1,000,000” and
 10 inserting “\$5,000,000 (adjusted at the same time and
 11 manner as under section 1202(c)(4))”.

12 (e) CONFORMING AMENDMENTS.—

13 (1)(A) Section 172(d)(2) (relating to modifica-
 14 tions with respect to net operating loss deduction) is
 15 amended to read as follows:

16 “(2) CAPITAL GAINS AND LOSSES OF TAX-
 17 PAYERS OTHER THAN CORPORATIONS.—In the case
 18 of a taxpayer other than a corporation—

19 “(A) the amount deductible on account of
 20 losses from sales or exchanges of capital assets
 21 shall not exceed the amount includable on ac-
 22 count of gains from sales or exchanges of cap-
 23 ital assets; and

24 “(B) the exclusion provided by section
 25 1202 shall not be allowed.”.

1 (B) Subparagraph (B) of section 172(d)(4) is
2 amended by inserting “, (2)(B),” after “paragraph
3 (1)”.

4 (2) Paragraph (4) of section 642(c) is amended
5 to read as follows:

6 “(4) ADJUSTMENTS.—To the extent that the
7 amount otherwise allowable as a deduction under
8 this subsection consists of gain described in section
9 1202(a), proper adjustment shall be made for any
10 exclusion allowable to the estate or trust under sec-
11 tion 1202. In the case of a trust, the deduction al-
12 lowed by this subsection shall be subject to section
13 681 (relating to unrelated business income).”.

14 (3) Paragraph (3) of section 643(a) is amended
15 by adding at the end thereof the following new sen-
16 tence: “The exclusion under section 1202 shall not
17 be taken into account.”.

18 (4) Paragraph (4) of section 691(c) is amended
19 by striking “1201, and 1211” and inserting “1201,
20 1202, and 1211, and for purposes of section
21 57(a)(8)”.

22 (5) The second sentence of paragraph (2) of
23 section 871(a) is amended by inserting “such gains
24 and losses shall be determined without regard to sec-
25 tion 1202 and” after “except that”.

1 (6) The table of sections for part I of sub-
 2 chapter P of chapter 1 is amended by adding after
 3 the item relating to section 1201 the following new
 4 item:

 “Sec. 1202. Exclusion for gain from certain small business
 stock.”.

5 (f) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to stock issued (or treated as is-
 7 sued) on or after January 1, 1993.

○

S 368 IS——2

S 368 IS——3